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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,225	11/28/2003	Jing-Horng Gau	NAUP0551USA	1224
27765	7590	02/03/2005	EXAMINER	
NORTH AMERICA INTERNATIONAL PATENT OFFICE (NAIPC)			GEBREMARIAM, SAMUEL A	
P.O. BOX 506			ART UNIT	
MERRIFIELD, VA 22116			PAPER NUMBER	
			2811	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicati n No.	Applicant(s)	
	10/707,225	GAU, JING-HORNG	
	Examiner	Art Unit	
	Samuel A. Gebremariam	2811	

-- The MAILING DATE of this communication appears on th cover sheet with th correspondence address --

**Period f r Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disp sition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Pri rity under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                   |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-8 drawn to a semiconductor device is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Yen et al., US patent No. 6,838,717.

Regarding claim 1, Yen teaches (fig. 10) a metal-insulator-metal (MIM) capacitor (250), comprising a first metal plate (252); a first capacitor dielectric layer (262) disposed on the first metal plate (252); a second metal plate (254) stacked on the first capacitor dielectric layer (262), wherein the first metal plate (252), the first capacitor dielectric layer (262), and the second metal plate (254) constitute a lower capacitor; a second capacitor dielectric layer (262) on top of 254) disposed on the second metal plate; and a third metal plate (256) stacked on the second capacitor dielectric layer, wherein the second metal plate, the second capacitor dielectric layer, and the third metal plate (256) constitute an upper capacitor; and wherein the first metal plate (252) and the third metal plate (256) are electrically connected to a first terminal (290) of the

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MIM capacitor, while the second metal plate is electrically connected to a second terminal (292) of the MIM capacitor.

Regarding claim 2, Yen teaches (fig. 10) the entire claimed structure of claim 1 above including the second metal plate (254) has a surface area that is smaller than that of the first metal plate (252).

Regarding claim 3, Yen teaches (fig. 10) the entire claimed structure of claim 1 above including the third metal plate (256) has a surface area that is smaller than that of the second metal plate (254).

Regarding claims 4 and 5, Yen teaches (fig. 10) the entire claimed structure of claim 1 above including the first capacitor dielectric layer is made of a dielectric.

The limitation that the dielectric layer is PECVD dielectric is not given patentable weight because it is considered a product-by-process claim. "[E]ven though product-by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Regarding claim 6, Yen teaches (fig. 10) the entire claimed structure of claim 1 above including the second metal plate (254) has a thickness that is thinner than that of the first metal plate (252).

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Regarding claim 8, Yen teaches substantially the entire claimed structure of claims 1 and 6 above including the second metal plate (254) comprises titanium (col. 4, lines 60-64).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yen.

Yen teaches substantially the entire claimed structure of claims 1 and 6 above except explicitly stating that the second metal plate has a thickness of about 1000 angstroms.

Parameters such as thickness and area in the art of semiconductor manufacturing process are subject to routine experimentation and optimization to achieve the desired device quality during fabrication.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the thickness of the second metal plate as claimed in the structure of Yen in order to improve the capacitance of the device.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References B and C are cited as being related to MIM.

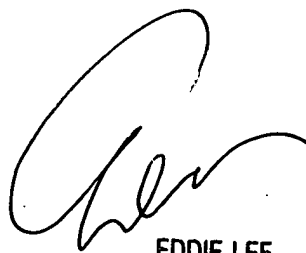
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel A Gebremariam whose telephone number is (571) 272-1653. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lee can be reached on (571) 272-1732. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAG  
January 27, 2005



EDDIE LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800